Supreme Court of the United States

October Term, 1949

No. 14

EUGENE DENNIS, *Petitioner*,

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR REHEARING

LOUIS F. McCABE
GEORGE W. CROCKETT, JR.
DAVID M. FREEDMAN
Attorneys for Petitioner

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PETITION FOR REHEARING

Eugene Dennis, by his attorneys, petitions for rehearing.

I. The Affirmance Rests On No Rule of Law Determined by a Majority of the Full Court or of the Participating Justices.

Petitioner's conviction has been affirmed by a vote of five to two. But as we read the opinions, no majority, either of the full Court or of the participating justices, has concluded that petitioner was tried by that fair and

impartial jury which is guaranteed to every accused by the Sixth Amendment. As we read the opinions, moreover, petitioner is to be deprived of his liberty not on the basis of any rule of law, determined by such a majority, but by a division of the Court which neither establishes nor affirms any rule of law.

Mr. Justice Jackson considers petitioner's conviction to be constitutionally unjust, and he has voted to affirm only because the injustice extends beyond petitioner's case. Thus, even without going further—and there is further to go—a majority of the full Court has not decided that government workers may serve on juries which try political offenses. Neither has a majority decided that government workers may serve on juries to try members of minority groups, political or non-political, Communist or non-Communist, which are the scapegoats of a hysteria and hostility engendered by the government and with which government employees may not be associated and retain their jobs. Nor has a majority decided that government-employee juries are legitimate where these circumstances coincide.[1]

On this division, and without regard to subdivision, what defendant and what trial judge can estimate what rule is to apply in the next case which falls within these categories? Yet the proclivity of the current administration for the institution of political trials guarantees that next cases are bound to arise—and soon, and in quantity, and in the District of Columbia.

Even now there are pending several cases in this Court which present similar issues. These presumably will be disposed of by a Court augmented by the return of Mr.

[1] We assume that Mr. Justice Jackson will be one of a majority, if it can be mustered, which in any given case limits *Frazier*, even if it will not overrule it. Obviously a defendant should not lose a reversal because the judges disagree merely as to the grounds for reversal.

Justice Douglas. We think this case also should be disposed of by the augmented Court. It is possible otherwise that the issues petitioner has raised will eventually be decided in his favor, but academically only, and while he is in jail. "What then," to quote Mr. Justice Jackson, "becomes of equal justice under law?"

Furthermore, if *Frazier* is to be the one decision of this Court whose principle cannot be limited or qualified, then a rehearing should be granted so that the Court may decide if, under those circumstances, it can tolerate *Frazier*. The opinion of the Court does not re-examine *Frazier* to see if it should be overruled, nor did we argue or brief the question. But if the case must be pushed to all lengths, then it should be reviewed *in toto*.

Mr. Justice Reed concurs in the opinion and judgment of the Court, but reads its decision to mean that a defendant may present to the trial court circumstances which may require it to imply bias in law to government employees as a class. (Of course, a defendant may always produce circumstances to show actual bias of the individual talesman, whether the actual bias derives from employment or anything else.)

The defect found in petitioner's case, then, is that he has made an insufficient factual showing in the record to warrant the conclusion that government employees should have been barred as a class from serving as his jurors, whether or not actual bias appeared as to any challenged talesman. The defect is not that such a showing cannot be made or that it is on an irrelevant subject.

But, we submit, it is more than a little obscure whether this is the basis on which the opinion of the Court rests. For while the opinion places reliance on the inadequacies of the evidence offered to the trial judge, it simultaneously, and contradictorily, states: "A holding of implied bias to disqualify jurors because of their relationship with the

Government is no longer permissible." Further: "We think the rule in *Wood* and *Frazier* should be uniformly applied."

Thus it cannot be said that three justices in addition to Mr. Justice Reed have ruled that evidence is admissible to support a challenge to government employees for implied bias. No trial court can, from this decision, know whether to entertain such evidence or to exclude it because implication of bias for government employment "is no longer permissible" and *Wood* and *Frazier* must be "uniformly applied." Nor can it be said, under the opinion of the Court, whether petitioner has failed to prove his case or whether his case is not permitted to be proved.

II. Petitioner Had No Opportunity in the Trial Court to Prove Circumstances Requiring Implication of Bias.

Petitioner's challenge can be held to fail for lack of an adequate showing to the trial court only if he had an opportunity to make the showing to the trial court. What is more, the trial court must have been willing to consider any such showing as being on a subject relevant to decision. The record demonstrates the contrary in both respects.

The record shows (R. 64-65) that the trial judge denied the challenge on the basis that the statutory provision, D. C. Code, sec. 11-1420, eliminated any possibility of disqualifying government employees as a class, and that a challenge to this class for implied bias was no longer available. The trial court rested not on an inadequacy of showing, but on the irrelevancy of any possible showing as to the class rather than as to the individual. The trial court did not even consider on the challenge the allegations of the affidavit in support of the motion for a change of venue. That it considered those allegations in ruling on the venue motion is of no consequence, since that motion

involved different considerations and since the court did not consider the allegations vis-a-vis the challenge.

The record does not bear out the statement in the opinion of the Court that "as far as it appears" the trial court was willing to consider evidence of government investigative practices and the climate of opinion among government employees. The trial court predicated the denial of the challenge on the assumption that the statute eliminated challenges based on government employment. Surely no trial court can be considered willing to receive evidence on a subject it has ruled to be irrelevant.

Accordingly, petitioner was not bound to offer a showing on his challenge. Obviously, one may not be held in neglect for a failure to offer evidence on a subject which the trial court regards as irrelevant.

It now appears from the concurrence of Mr. Justice Reed and from the opinion (in part) of the Court that the statute regarding government-employee juries is not so rigid as the trial court considered it to be, and that its literal text may be overcome by evidence. But if this is the rule, then petitioner should be given the benefit of it. He cannot have had that benefit so long as the trial court did not realize that it was available. He cannot have had it so long as this Court had not yet announced that the statute cannot be literally read and that an accused has a right to demonstrate by evidence that government jurors should be disqualified as a class.

On this ground alone rehearing should be granted and the judgment below reversed. At the very minimum, the case should be remanded for the taking of testimony by the trial court as to whether government employees should be disqualified as a class. Only thus will petitioner be accorded his rights under the rule now announced by the opinion of the Court. Such a remand would be no procedural innovation; it would be nothing more than a direc-

tion that evidence be taken as on a motion for a new trial.

III. The Opinion of the Court Applies an Erroneous Criterion to the Question of Whether Bias Should Be Implied for Government Employees.

"No question of actual bias," states the opinion of the Court, "is before us." But the opinion of the Court then applies to the question which is before it—whether bias should be implied—a test which is appropriate only in determining the question which is not before it.

The opinion of the Court stresses the responses of the talesmen to the interrogatories on voir dire. The opinion states: "We must credit these representations. . . ."

But the responses of talesmen, and whether or not they are to be credited, is relevant only to determining whether actual bias has been shown. Nothing could be more irrelevant to whether bias should be implied. The very theory of implied bias is that disqualification ensues despite all responses of the talesmen, credible or not. If the responses show actual bias, there is no point in getting to any question of implied bias.

There are two basic considerations for the implying of bias for certain classes. One is that in the case of certain relationships it is recognized that there is such a possibility of bias which may be unconscious, that the talesman's assertion of an indifferent attitude cannot be trusted. The other is that certain classes must be disqualified in order to preserve that appearance of impartiality which is essential to the preservation of confidence in our judicial system.

A relative of a party may not serve as a juror, let him assert however convincingly that his verdict will not be influenced by the relationship. The law cannot place confidence in the juror's response under the circumstances,

no matter that it was made in the utmost good faith. Nor can the law have it appear that controversies may be determined in judicial proceedings by those who are kin to one of the parties.

The test used in the opinion of the Court amounts, thus, to a repudiation of all challenges for implied bias. If the juror's response is to be the relevant factor, then a relative of a party may sit, so long as he has responded appropriately. If it is the "state of mind" which is to govern, then all disqualifications for implied bias must go by the board, since they do not depend on "state of mind".

What the opinion of the Court does is to contradict the psychological premise which underlies all rules disqualifying jurors for implied bias. The opinion of the Court states: ". . . surely one who is trying as an honest man to live up to the sanctity of his oath is well qualified to say whether he has an unbiased mind in a certain matter." Yet it is exactly the contrary which is held whenever any rule of implied bias is created or applied. And psychology teaches that it is the contrary which is right and the statement of the Court which is wrong. That statement disregards the infinite human capacity for self-deception and rationalization. It ignores the circumstance that one of the last things a person will admit to himself is that he has an irrational prejudice or an even rational timidity. It contradicts the teachings of psychology that men are often not fully aware of their own emotional attitudes.

Precisely because of its erroneous psychological assumption, the opinion of the Court destroys the foundation of all challenges for implied bias. Bias is implied because the law cannot, under certain circumstances, accept the juror's response, not because the juror is less honest than other persons or less well qualified to judge his own attitude. If the logic of the opinion of the Court is to prevail, then relatives of a party and those having a financial interest in the outcome of the litigation cannot be dis-

qualified for implied bias. If they admit a prejudice, they are disqualified for actual bias. If they deny it, their statement must be credited, since they are as honest as the next man and as well-qualified as any to say whether their minds are unbiased.

IV. The Opinion of the Court Misconceives the Issues.

The fact is that the opinion of the Court misconceives our position almost entirely, and with it the issues in the case.

We did not rely solely or principally on the existence of some "miasma of fear". Neither did we ask preferential treatment for Communists; we could not have been so naive.

Our position is this:

(1) First, every accused, and not just Communists, should be given a fair and impartial jury as contemplated by the Sixth Amendment. No other rule can infringe this one even for the sake of uniform application of that other rule. Indeed, we do not understand the opinion of the Court, which on the one hand declares that the rule of *Frazier* and *Wood* must be uniformly applied, and on the other declares that "for the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula."

(2) In the implementation of the requirement of the Sixth Amendment, a government employee should not be permitted to serve as a juror in any criminal case, regardless of his responses on voir dire. If he did not press this contention before it was because we thought that petitioner's case did not require going so far. Besides, we thought that *Frazier* was not ripe for overruling. The application which has now been given it makes it overripe.

(3) Even if government employees may serve as jurors in ordinary criminal cases, they should not be permitted to serve in prosecutions for political offenses, that is, where "the Government's interest is the vindication of a direct affront, as distinguished from its role in an ordinary prosecution." Such a rule would not apply to Communists only, but to Republicans, Democrats, and anybody else involved in a prosecution for contempt of Congress or other political offense.

(4) As an independent ground, bias should be implied to government employees whenever the accused is a member of a group which is governmentally stigmatized as "disloyal", which is the object of a hysteria largely engendered by the Government, and membership in which or association with which results in disqualification for government service on grounds of "disloyalty". Particularly should bias be implied when the prosecution of such an accused is for a political offense. Such a rule does not discriminate in favor of Communists. It merely recognizes that there is a discrimination against them, in order to apply realistically the one uniform rule which is mandatory—that the accused shall have a fair and impartial jury. Furthermore, the rule should also apply to defendants who are members of non-Communist and anti-Communist organizations which have been declared "subversive" by the government. Mr. Justice Jackson's dissent, like the opinion of the Court, oversimplifies the issues in this regard. Perhaps the administration is hostile to Republicans as well as to Communists, but there is a controlling difference of kind and degree of hostility. If a Republican is on trial for contempt of Congress, he may find that government employees serving on the jury are themselves Republicans or "sympathetically associate" with Republicans. But a Communist cannot find that government-employee jurors are themselves Communists or sympathetically associate with Communists.

The issues presented in the above summary have not been treated by the opinion of the Court. The opinion does not, thus, consider whether in a political prosecution it is reasonable to suppose that government employees may be predisposed, subconsciously or otherwise, in favor of the interests of their employer. It does not consider whether, in such a prosecution, it is unseemly for employees of the government to serve as jurors. It does not consider how the service of government employees as jurors in such cases squares with the historic function of juries—to be a buffer for an accused against political reprisal of his sovereign. In fact, the opinion of the Court does not consider this contention at all, but merely gives it a bare mention before going on to the contention on which, it is said, "petitioner primarily bases his case". We had no intention of making secondary to anything our contention that government employees may not serve as jurors in prosecutions for political offenses. And if it were a secondary contention, nevertheless it deserved to be dealt with.

Even on the issue considered to be the primary basis of our case the opinion of the Court draws the lines far too narrowly. The opinion of the Court refuses to find that government employees are affected by a miasma of fear because of the Loyalty Order. But the issue goes beyond fear and beyond the Loyalty Order.

Government employees should be disqualified from serving in cases such as petitioner's not merely because fear may affect their verdict—and such fear exists—but because an entire state of mind, incompatible with reaching an impersonal verdict in such cases, has been engendered in government employes. Fear is only part of this state of mind. The discipline which government employees are under, the expressed sentiments of their superiors in office, the attitudes of their associates, the governmental policies they effectuate—all these tend to create a pre-

disposition, perhaps wholly subconscious, which prevents them from being, and from seeming to be, fair jurors in a political trial of the General Secretary of the Communist Party. A man who in his daily work must be officially and personally anti-Communist is not an appropriate juror for a Communist defendant charged with an offense touching the security of the state.

As to the element of fear, this does not, as the opinion of the Court supposes, arise merely from the Loyalty Order, nor does it concern only job tenure. Were there no Loyalty Order a government employee would have cause to be wary of the witch hunts of the Committee on Un-American Activities, to name only one governmental agency. Nor was the bill of attainder against Lovett, Watson and Dodd (328 U. S. 303) a product of the Loyalty Order. A government employee who is accused of being pro-Communist not only has his job in jeopardy, but may find that he and his family are the objects of social ostracism and indignities. This has been the experience of State Department employees who are currently under attack by Senator McCarthy. Their testimony to that effect, widely reported in the press, is incorporated in official hearings, which have not yet been published.[2]

V. The Opinion of the Court Fails to Take Judicial Notice of Relevant, Noticeable Facts.

Rehearing should be granted because the Court has failed to take judicial notice of facts which are relevant and noticeable and which can take the place of the "vague conjecture" which the opinon of the Court refuses to make.

[2] The owner of a private business in Washington was similarly subjected to extreme indignities and economic pressure following her "investigation" in a hearing of the Committee on Un-American Activities. She was finally driven out of business. See Hobbs, *The Subversive Drugstore*, The Nation, November 26, 1949.

The opinion of the Court indicates two areas of relevancy for the purposes of introduction of proof. Obviously the same areas must be available for the purposes of judicial notice, a process which takes the place of the production of proof.

A.

The first of these areas includes "any evidence which would indicate that investigatory agencies of the Government had recognized in the past or would take cognizance in the future of a vote of acquittal."

Government investigating agencies do not, of course, make their files available. They refuse them even to Congressional subpoena. Noticeable information as to their practices is, therefore, scant. Nevertheless, it exists and on the point at issue is fully persuasive.

The record of *United States* v. *Judith Coplon*, District Court, District of Columbia, No. 381-49, contains some 800 transcript pages of official investigative reports of the Federal Bureau of Investigation in the field of "internal security". These reports received extensive publicity at the time they were put into evidence. They are the basis of a report of the National Lawyers Guild, which was publicly released in January 1950, when a copy was transmitted to the President. *Report of the Special Committee of the National Lawyers Guild Appointed to Study Certain Alleged Practices of the FBI.* Both the investigative reports which appear in the *Coplon* record and the Guild report are proper subjects of judicial notice.

The *Coplon* reports record investigations of "loyalty" of individuals along the lines of "loyalty" investigations of government employees.* They demonstrate that in these

* To document this assertion and subsequent references to the comprehensive nature of the F. B. I.'s criteria of "loyalty," we quote in the Appendix to this brief several excerpts from the National Lawyers Guild Report.

"loyalty" investigations the FBI takes cognizance of activities and associations which are as lawful as a vote of acquittal and which indicate no greater affinity for Communism than a vote of acquittal for the General Secretary of the Communist Party. Particularly revealing, for present purposes, is a passage in a report of the FBI investigation of two well known actors, Frederic March and his wife, Florence Eldridge March. This report includes the following information, collected by the FBI on its own initiative and not merely recorded as something volunteered to it by an outsider.

> The New York 'Times' newspaper, June 26, 1947, carries an item bearing a Washington, D. C. dateline, which reflects that Frederic March and his wife, Florence Eldrige, led a parade of witnesses for the defense in the mass trial of 16 members of 'an alleged Communist front organization' for contempt of Congress. Instant article stated that the stage couple testified in court to the excellent reputation of Herman Shumlin of the Joint Anti-Fascist Refugee Committee, one of the accused. (*Coplon trial*, stenographic transcript, pp. 5244-5255. Also quoted in *Guild Report*, Appendix B. p. 4.)

Thus in 1947, the year when petitioner was tried, the FBI took cognizance, as relevant to the "loyalty" of two individuals (whose "loyalty" it had no business investigating), that they testified in a political trial in the District of Columbia. Their testimony concerned not the General Secretary of the Communist Party, but the reputation of a theatre producer, a well-known capitalist. Their act of testifying was every bit as much a part of the judicial process as a juror's act in voting to convict or acquit. And a juror who votes to acquit renders an accused a much greater service than a character witness.

From the sole source of available illumination, it appears that the F. B. I. applies in its "loyalty" investigations approximately the same criteria of "loyalty" as those of the Committee on Un-American Activities, described in our

principal brief. It seems plain that an F. B. I. agent would be guilty of a gross dereliction of duty if he failed to take cognizance of a government employee's vote for the acquittal of the General Secretary of the Communist Party.

Furthermore, the Committee on Un-American Activities is itself a government investigatory agency. In the light of what is known about the Committee's standards, some of which are referred to in our principal brief, there can be no rational doubt that it would take cognizance of such a vote for acquittal. Moreover, the files of the Committee are open to and freely used by the various agencies of the executive branch. Thus the latest annual report of the Committee discloses that last year agents of executive agencies made 3,956 visits to the Committee's files section to obtain information concerning more than half a million individuals. (*Annual Report of the Committee on Un-American Activities for the Year 1949* (March 15, 1950), p. 21.) The Committee also supplied to members of Congress data on the "subversive" affiliations of 2,473 persons, as well as 597 reports on the nature of various organizations (*Id.*, p. 20). Indeed, Part I, section 3 of the Loyalty Order requires that loyalty investigations shall include reference to files of the Committee. It is particularly significant for present purposes that the investigators of the executive branch consult Committee files with respect to the exercise of the franchise: ". . . the committee has made available a large, completely indexed, and readily accessible reference collection of lists of signers of Communist Party election petitions, which is consulted daily by investigators from various Government agencies as well as staff members" (*Id.*, p. 19).

B.

The second area of relevancy indicated by the opinion of the Court includes "evidence with respect to the existence of a climate of opinion among Government employees

that they would jeopardize their tenure or provoke investigation by such a verdict."

No survey of opinion of government employees on this subject is, so far as we know, available. If it were, it would not be reliable. An intimidated government employee can hardly be expected to admit that he is intimidated, particularly since the admission might well bring about the very consequence he is afraid of. We did, however, refer in our principal brief to the conclusions of competent observers of the Washington scene. What is more, episodes occur in Washington which can only be the product of fear on the part of government employees, as in the eruption over the Shura Lewis speech in a Washington school (Brief, pp. 47-48).[4]

Beyond this, the most convincing evidence that Government employees would consider a vote for acquittal a perilous action is that all facts demonstrate that such an opinion would be well warranted. A government employee has merely to read the papers to see how little it takes to jeopardize an employee's tenure when questions of Communism are involved. Let the Secretary of State merely express sympathy for the plight of his old friend, Alger Hiss, and the next day the Secretary's fitness to hold office is under savage attack and his dismissal is rumored. Let a government employee participate in the framing of foreign policy which is thereafter considered to have failed, and he is immediately accused of being a tool or dupe of the Kremlin.

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[4] This episode also illustrates how particularly unreliable is subjective evaluation of a mental state which arises from a complexity of fear and political opinion. Obviously the irrational actions of the school authorities and others were the product of a cold war neurosis. Yet those who so acted claimed, no doubt in all good faith, that they were concerned with protecting the morals of the youth from being corrupted. A similar rationalization led to the condemnation of Socrates in an ancient political trial.

The opinion of the Court fails to take into account the real facts of the Washington scene. It appears to find it incredible that government employees should cringe before their superiors. But what it ignores is that government employees cringe, and certainly have every reason for cringing, not so much before their superiors as before their superiors' cringing before Congress. Let the Committee on Un-American Activities persistently charge that the executive branch is full of Communists, and a full-fledged "loyalty" program is developed and applied by the executive. Let a Senator make accusations on the floor, no matter how vague and unsubstantiated, and those he has mentioned are summoned from the four corners of the earth, be their rank as elevated as that of Ambassador.

What every Washington observer realizes is that government employees must be wary not of the "loyalty" standards of their superiors in the executive branch, but of the "loyalty" standards of whoever happens to be at the moment the most recklessly outspoken member of Congress. That a vote for acquittal of the General Secretary of the Communist Party would be something every member of Congress would pass off with indifference is not to be thought of, particularly where the case is one for contempt of Congress and Congressmen testified for the prosecution.

Furthermore, the government employee who is called upon to vote as a juror is conditioned not only by the general environment but by his knowledge of his own background. Perhaps he would not be afraid to vote to acquit Eugene Dennis if that were the sole factor relevant to his "disloyalty." But suppose that sometime in his life he had belonged to an organization to the left of the Kiwanis Club, or had given money to the cause of the Spanish Loyalists, or had known a Russian, or had worked in certain sections of the State Department? He could not then be so imperturbable.

Moreover, government employees, especially if they have some such element in their background as those described, are virtually compelled, if they wish to keep their jobs, to declare that they are anti-Communist, not merely non-Communist. There is a precedent for holding that an accused may be tried in a political prosecution by a jury composed of his avowed political enemies, but coming as it does from Lord Braxfield's notorious court, it is not a palatable one. *Trial of Thomas Muir*, 23 How. St. Tr. 117 (1793).

Nor will it do to suggest that others are under the same pressures as government employees. Others too are in vulnerable positions, but not all others. Yet every government employee, from a charwoman to a cabinet officer, is vulnerable. There is no better game than a government employee, for whatever he is blamed for becomes the fault of the administration of an opposing political party.

These are the realities of life in Washington today. Everybody knows them. They are not conjectured. We do not understand how they can be ignored.

CONCLUSION

Trial by jury was won in Magna Charta as a measure of protection against the sovereign. This function of the jury is now overturned by the opinion of the Court. Government employee juries afford an accused in a political trial no greater comfort than judges appointed by the king and holding office at his sufferance. The Court's opinion thus presses further the noticeable gradual relegation of juries to a position as an arm of the administrative bureaucracy rather than as a barrier against injustices attempted by that bureaucracy.

We do not believe that the Court which decided *Wood* had any notion that the path down which it was starting

would lead to any such destination. We do not believe that the *Wood* Court would have sustained government-employee juries in a case like the present. Yet from *Wood* through *Frazier* to *Dennis* there has been a progression which vitiates the right of jury trial. This progression has abandoned primary principles for the sake of extending the reach of a decision which was originally questionable.

What is more, the result so reached by the present decision is based not on the issues which are involved or on the realities which all can see, but on abstractions which are not involved. Yet the protection of constitutional liberties, particularly vital in a time of political stress, requires that this Court meet issues which involve these liberties directly and realistically.

Petitioner's case presented to the Court important legal questions which touch the very heart of our society—the fair administration of justice. These issues are left dangling by the division of the Court. The opinion of the Court is obscured by internal contradictions. Petitioner is denied relief for failing to make a showing although only by the present decision does it appear that he was entitled to make the showing. To the question before it the opinion of the Court applies a criterion which is appropriate only for a question not before it and which destroys all challenges for implied bias. The opinion of the Court fails to deal with the issues which are present and misconceives the position of the petitioner. While repulsing conjecture, the opinion of the Court itself ignores judicially noticeable facts and realities of which every one is aware.

If ever a case clamored for rehearing, this one is it.

Respectfully submitted,

Louis F. McCabe
George W. Crockett, Jr.
David M. Freedman
Attorneys for Petitioner

CERTIFICATE OF COUNSEL

I certify that the within and foregoing petition for rehearing is presented in good faith and not for delay.

George W. Crockett, Jr.

APPENDIX

Excerpts from Report of the Special Committee of the National Lawyers Guild Appointed to Study Certain Alleged Practices of the FBI:

> In short, the FBI, as the Coplon reports reveal, is conducting a program of 'loyalty' investigations of persons who, as in the case of the subjects of the Coplon reports, are not government employees or applicants for government employment. The reports themselves are dossiers on the 'loyalty' of the subjects, that is, on their views and associations. What is more, they amply demonstrate that the FBI collects data and keeps files on the 'loyalty' of many individuals other than those who are the subjects of the Coplon reports.
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> • • •
>
> It is worth noting that the FBI 'loyalty' program for private individuals preceded the full-scale 'loyalty' program for federal employees, which got under way late in 1947. (P. 6).
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> • • •
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> One of the more publicized items in the Coplon reports was the solemn statement that a certain young lady in Washington made a date with a man to go to Baltimore to buy some Polish sausage from a Polish butcher. If this information had been furnished to the FBI by some volunteer, one might deplore the existence of cranks in this world and not criticize the FBI, except, perhaps, for an over-zealous red tape which causes its staff to record every complaint, no matter how trivial. But the situation is different when it is realized that this information was obtained by the FBI's own efforts in tapping the young lady's phone, and that the message so intercepted was only one of numerous messages of like nature which the FBI considered sufficiently important to perpetuate in a formal report. (P. 3).
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> Some of the FBI's criteria of loyalty have already been indicated in this text, in connection with the

'reasons' which caused the institution of investigations. For present purposes it will suffice to list the following as an additional small sampling of items to which the Coplon reports obviously attach significance.

Being affiliated with the Progressive Party. (Reports 1, 3, 8, 9, 12, 14, 24.)

Admiring the military feats of the Russian Army during World War II. (Reports 12, 28).

Acting (in 1945) in a skit about the battles of Leningrad and Stalingrad. (Report 1).

Opposing the Committee on Un-American Activities. (Report 1).

Writing a master's thesis on the New Deal in New Zealand. (Report 2).

Attending a rally against the Mundt Bill (Report 3).

Having an "extremely friendly attitude" towards Russia. (Report 1).

Having "pro-Soviet" sympathies. (Report 12).

Doing work for Russian War Relief. (Report 24).

Advocating aid to Russia in 1941 and 1942. (Reports 9, 24).

Giving money for Spaniards exiled in France. (Report 24).

Writing 'subtle Russian propaganda in a Jewish newspaper.' (Report 13).

Writing a book about Russia 'which is written from a Russian propaganda viewpoint and presents Russia in a favorable light.' (Report 23).

Having in one's library 'I Choose Freedom' by Kravchenko and 'The Coming Crisis'. (Report 27).

Possessing considerable literature on B'nai Brith and the American Council of Jewish Women. (Report 27).

Being 'a pro-Soviet playwright who visited the U. S. S. R. in 1945' (Report 27). In the case of a newspaper, 'reflecting pro-Soviet policy'. (Report 9).

Supporting the War Department's policy (in 1945) of not refusing army commissions on account of recipients' opinions. (Report 1).

Making a recording of Langston Hughes' 'Freedom Plow.' (Report 1).

Taking courses under Veblen. (Report 12).

Making 'a strong, progressive speech', which attacked an anti-semitic teacher, 'called upon the American women to fight for the Wagner-Murray-Dingell Bill and complained that the German invaders destroyed some 80,000 schools in the Soviet Union and other countries which had been under German occupation.' (Report 1).

Being the maternal aunt of the Chairman of the Friends of Free Germany. (Report 13).

Writing a book about an heroic Russian woman. (Report 23).

The reports also indicate a propensity to list or look for the union memberships of persons referred to (Reports 6, 10, 11, 13, 14, 17), including one case (Report 10) in which FBI 'indices' apparently carried the names of 60 employees who had signed up in a union organizing drive. The reports also contain indications of anti-Negro and anti-Semitic prejudices.

One of the most psycopathic features of the loyalty-determining process in the Coplon reports is the solemn assessment of the 'loyalty' to the United States of persons who owe their loyalty not to the United States, but to other countries of which they are citizens. Thus one of the reports (Report 26) considers it important to note of a Yugoslav citizen, who came to Chicago from Belgrade to work in the Yugoslav consulate, that he is probably a member of the Yugoslav Communist Party, and that he 'is very anti-American in his political views and always favors Russia and Yugolavia in all questions pertaining to problems arising between Russia, Yugoslavia, and the United States).' Another report (Report 23) comments as follows of a Russian-born author who writes in the Russian language and is a citizen of Yugoslavia: 'Her comments in personal correspondence shows her continued allegiance to the 'New Yugoslavia' and her apparent lack of loyalty to the U. S.' A third report (Report 9) considers it necessary to observe that Metropolitan Gregory, Patriarch of Moscow, 'has been reported to be ardently pro-Soviet.' (pp. 6-8; footnote references have been omitted.)